



3800
(UT-020)

Memorandum

To: State Director (UT-921)

From: District Manager, Salt Lake

Subject: Response to Instruction Memorandum UT-95-39, Final Review of Recreational Gold Dredging Permits

Thank you for the opportunity to comment on the final draft of the Recreational Gold Dredging Permit and Sluicing policy (RD&S) with a list of streams open to RD&S. As we have stated in the past, we don't believe that it is appropriate to regulate this kind of activity as casual use under our regulations. We want to go on record one more time with this position and respectfully ask you to consider that there are real differences between streams in their tolerance of this kind of activity. Although small diameter dredges operating in the stream bed in an Oregon river may have no adverse environmental effects, it does not follow that the same kind of activity will also be benign in over-fit, incised, and losing streams in Utah. This is particularly true in those locations where the riparian zone of such a Utah stream has already been significantly degraded. We believe that indiscriminate dredging in Utah waterways could have tragic consequences. However, we do understand that you have made a policy determination and will live with your decision. Our detailed comments follow.

1. Attachment 2, List of Streams, Note

The second sentence presently reads as follows: "The responsibility to contact property owners or mining claim holders for permission to trespass is left to the permittee." Please change this to read: "The responsibility to contact property owners or mining claim holders for permission to enter upon their lands is left to the permittee." If one has permission, one is not in trespass.

2. Ophir Creek (6).

We request that Ophir Creek be removed from this list. Ophir Creek was incised by flooding in the mid 1980's and remains in a degraded environmental condition. Only a very small portion of the creek bed is in federal ownership and all of that federal ownership is under mining claim. Most of the water in Ophir Creek has been diverted into a pipeline and is no longer in the channel.

We have enclosed a map illustrating land ownership in the Ophir Creek area. Areas colored in yellow are public land. Only the area immediately adjacent to the creek has been colored.

There is no public legal access to Ophir Creek north of the line between sections 13 and 24, T. 5 S., R. 4 W. Therefore, we can not

provide access to the portion of Ophir Creek in section 6, T. 4 W., R. 4 S.

BLM administers about 150 feet of Ophir Creek in Section 24, T. 5 S., R. 4 W., but this segment is not clearly marked in the field and is difficult to locate. We believe that this portion of the Creek is also under mining claims owned by Amwest Exploration. These particular claims predate Public Law 167, so we may have only limited surface management authority in this area. We have enclosed a list of mining claims that are located in the Ophir Creek area.

The Ophir Creek Water Company has a water right to 11 cubic feet per second of Ophir Creek water with an 1875 priority date. There is rarely 11 cubic feet per second in the creek. Their point of diversion is on private land near the town of Ophir where the water is put in a pipeline. The portion of the creek downstream from their point of diversion is dewatered most of the time. Most all of the public land with legal access on Ophir Creek is downstream from ~~the~~ their point of diversion. Also, all of the public land downstream from the point of diversion appears to be under mining claim. This includes the public land in sections 27, 28, and 33, T. 5 S., R. 4 W.

Given the facts presented above, when someone with a RD&S permit contacts our office to discuss Ophir Creek we will tell them that we have no public land in the creek that has public access, reliable water, and is free of mining claims. We believe that including Ophir Creek on this list constitutes advertising a product that we can not deliver. We believe this to be bad public policy so we request that Ophir Creek be removed from the list.

Thank you for the opportunity to comment on this final draft. Should you have any questions regarding this memorandum, please feel free to contact Phil Allard at (801) 977-4335.